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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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June 29, 2007

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The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 PS Docket No. 06-229, WT Docket No. 96-86 (*Ninth Notice of Proposed Rulemaking*)

Dear Chairman Martin:

We commend you for your consideration of the above-referenced rulemaking. We request that this letter be placed in the public comment file with respect to that proceeding. We believe that it is worth considering whether public-private partnerships can help First Responders use more efficiently the 24 MHz of spectrum that was cleared by the Digital Television Transition and Public Safety Act of 2005 and made available specifically for that purpose. Proposals like those of Frontline to jury-rig the 700 MHz auction, however, would force public safety officials to negotiate with one winner, of one auction, with one pre-determined business plan and no track record of success. In the end, it would harm both the broader auction and our public safety goals. We urge you to reject Frontline-type schemes and stick with your proposal in the Ninth Notice of Proposed Rulemaking to allow First Responders to negotiate with all comers outside the confines of an auction.

Public safety officials have expressed concern that Frontline does not adequately represent their interests, as evidenced in the recent filings of the National Public Safety Telecommunications Council, the Association of Public Safety Communications Officials, and others. State and local government representatives oppose the Frontline proposal for similar reasons in filings by the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities. The public safety and

government officials note that little time has been available to scrutinize the 11th-hour proposal, which is short on specifics, leaving doubt whether the business plan and proposed network will really work. They also worry that the coverage, reliability, security, and quality of service will not meet public safety standards; that the network will not be available for years; and that First Responders will lack control.

Public safety officials are so skeptical, in fact, that they insist any spectrum set-aside for entities such as Frontline be granted on the condition that the licensee meet a series of public safety requirements or return the spectrum. The statement of requirements, however, will not be drafted until some time in the future. The odds of crafting precisely the right auction conditions, that create precisely the right model, and that result in precisely the right winner, who will then agree to public safety's requirements are minimal at best. We are likely to be left either with no bidder, or a winner who will neither meet the needs of public safety nor relinquish the license without a fight. Meanwhile, we would have wasted time, spoiled the auction, taken valuable spectrum out of circulation, and slowed progress toward our public safety goals. The history of spectrum policy has been marred by unfortunate incidents in which litigation delayed the allocation and use of spectrum.

Alarmingly, a number of Frontline's proposals do not even have anything to do with public safety. Suggestions to impose wholesale and so-called open access requirements, for example, are blatant poison pills to discourage competing bids and lower the price of the spectrum. An outright prohibition on participation by incumbents is similarly self-serving. Whether considered as part of the Frontline proposal or as stand-alone requirements, these restrictions are inappropriate. Business models should be left to the market, not hard-wired into auctions. Moreover, Congress overwhelmingly rejected network neutrality mandates last year in a bipartisan vote of 269 to 152 on the House floor. The Commission has also just launched proceedings which we believe will demonstrate that network neutrality and device unbundling mandates are not only unnecessary, but harmful. The National Public Safety Telecommunications Council and the Association of Public Safety Communications Officials have also expressed concerns that requiring open access would jeopardize the public safety network.

To avoid starting down a path that will be difficult, if not impossible, from which to recover, we suggest that the Commission follow the approach it outlined in the Ninth Notice of Proposed Rulemaking. There, the Commission proposed assigning half of the 24 MHz of spectrum to a public safety licensee that would have discretion to enter into public-private partnerships. This would allow more time to consider additional proposals, increase the likelihood that the network actually meets the needs of public safety, and give First Responders more control, not to mention more competitive alternatives than one license holder. Further, it does so without jeopardizing the 24 MHz of public safety spectrum, the 60 MHz of commercial spectrum, or the auction proceeds that will fund the \$1 billion interoperable public safety grant program and the \$1.5 billion converter-box program for digital television. The prospect of subscribers from tens of thousands of public safety agencies and the pooling of spectrum will give multiple parties incentives to negotiate with First Responders. Proposals could come from winners of this

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auction as well as holders of other licenses, all of whom may be willing to provide public safety access to additional spectrum and their existing infrastructure in return for access to public safety's spectrum.

This approach will also leave more spectrum available to create a greater diversity of geographic license sizes and spectrum blocks. The Commission would then have an easier time creating options for a wide variety of providers: national, regional, and local; large, medium, and small; incumbent and new entrant; rural and urban.


It is imperative that the Commission abide by the statutory timetable for the auction. Achieving the right balance between the commercial and public safety interests, however, will take fundamentally more flexibility, coordination, and cooperation than can possibly be achieved through a hastily fabricated proposal reverse-engineered into an auction. Separating this matter from the auction would also allow us to take a more cautious and deliberative approach, not just the 28 days that could be allotted to the pleading cycle without jeopardizing the January 28, 2008, statutory deadline for start of the auction. Moreover, both the First Responders and the commercial entities may see need for adjustments. Such adjustments are manageable when relationships are based on contracts and service agreements, which can have shorter durations, modification provisions, and termination clauses. Spectrum licenses, by contrast, cannot be easily modified or terminated. De-linking the debate from the auction would also free bidders to make their auction plans, rather than continue to hold them hostage as delays over this controversy continue to threaten the time that will remain between release of the rules and the auction.

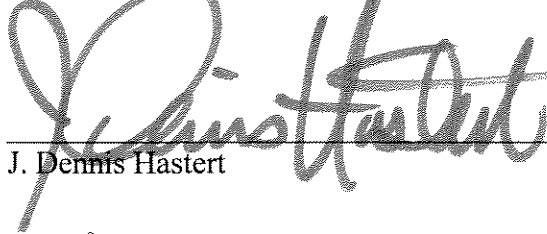
If Frontline and others believe in their business plans and are genuine in their desire to help public safety, there should be no need to stack the deck. They can still participate in the auction, enter into an agreement with First Responders, and voluntarily operate their networks under a wholesale and open access model. If they cannot raise enough money to win spectrum at a fairly structured auction, this is an indication that their proposal will not adequately serve either public safety or consumers. Honest, market-based auctions work when free of onerous service conditions. They have fostered a vibrant and competitive wireless industry, and produced tens of billions of dollars in Federal revenue. But the rules are critical. If done right, they create a fair playing field. If rigged, they sway the auction toward particular parties and particular business models. Let us not mistake this proposal for what it is: yet another attempt to get valuable spectrum on the cheap.

Sincerely,

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell


Joe Barton, Ranking Member,
Committee on Energy & Commerce



Fred Upton, Ranking Member,
Subcommittee on Telecommunications &
the Internet


J. Dennis Hastert


Cliff Stearns


Ed Whitfield

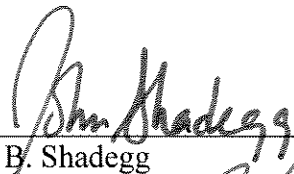

Nathan Deal



Gene Green

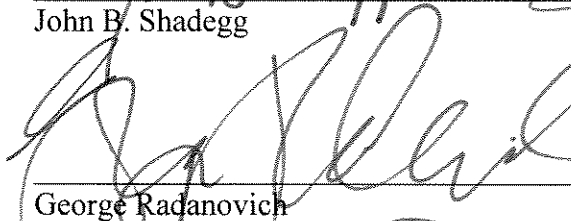

Charles A. Gonzalez

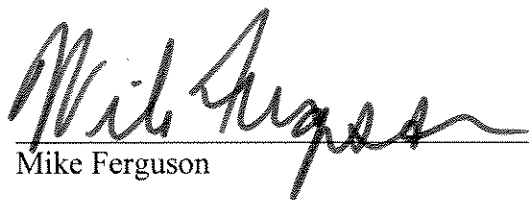

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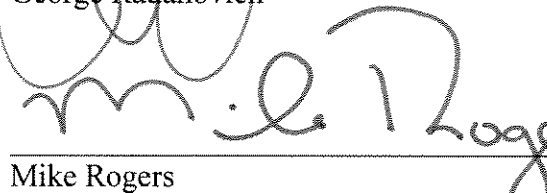

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